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CHARLES ELMORE C
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1933.

THE METROPOLITAN CASUALTY INSURANCE COMPANY OF NEW YORK,
Petitioner,

v.

KENNETH V. BROWNELL, as Receiver of the PEOPLES NATIONAL BANK AND AND TRUST COMPANY,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT, WITH SUPPORTING BRIEF.

JAMES W. NOEL,
Attorney for Petitioner.

HUBERT HICKAM,
ALAN W. BOYD,
ROBERT D. ARMSTRONG,
Of Counsel.

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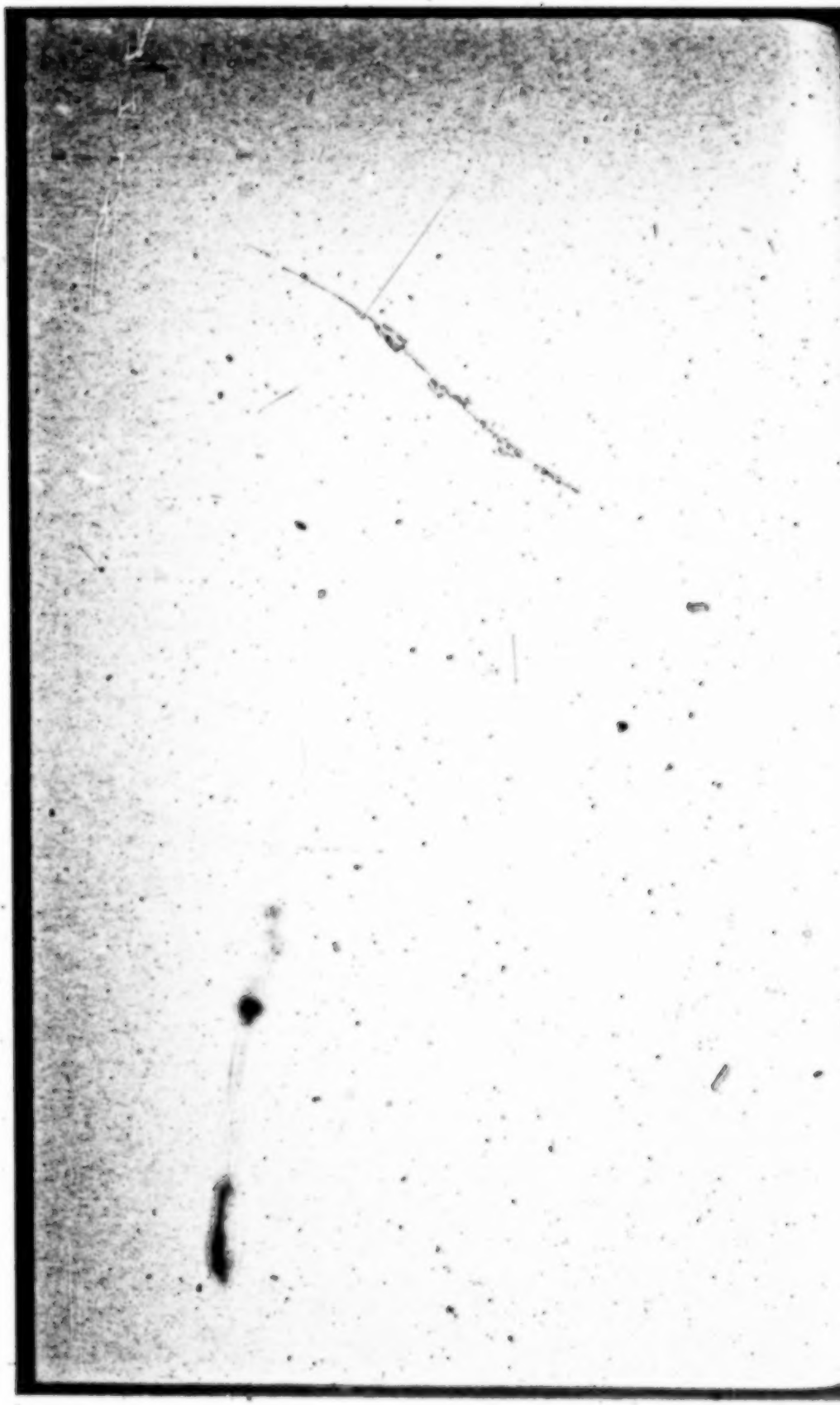

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KENNETH V. BROWNELL, As Receiver of the PEOPLES NATIONAL BANK AND TRUST COMPANY,
Respondent.

No. ------.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT, WITH SUPPORTING BRIEF.

May It Please The Court:

The petition of The Metropolitan Casualty Insurance Company of New York respectfully presents to this Honorable Court:

I.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

This was an action at law to recover against petitioner on a bond whereby it agreed to indemnify the Peoples National Bank and Trust Company to the extent of $5000 for losses occurring by reason of the dishonesty of any employee during the effective period of said bond. The bond contains, among others, the following provision:

> "Time for Investigation by the Underwriter.
> "(6) That the Underwriter shall have two (2) months after presentation of sworn statement of claim within which to verify the same by appropriate investigation, during which time no legal proceedings shall be brought against the Underwriter as to that claim, *nor may such proceedings be brought at all as to that claim after the expiration of fifteen (15) months from the date of its presentation.*" (Our Italics.)
>
> (R. 3-14.)

An Indiana statute passed in 1865 (Sec. 9139 Burns' Ann. Stat. 1926, Indiana Acts of 1865, p. 105), provides as follows:

> "9139. (4803) Conditions forbidden.—6. No such insurance company shall insert any condition in any policy hereafter issued requiring the insured (Here follow certain immaterial provisions), * * * and any provision or condition contrary to the provisions of this section, or any condition in said policy inserted to avoid the provisions of this section, shall be void, *and no condition or agreement not to sue for a period of less than three years shall be valid.*" (Our Italics.)

As construed by the Supreme Court of Indiana, this statute purports to render invalid any provision in a policy issued by a *company of another state* doing business in Indiana restricting the time for commencing action to a period of less than three years. Domestic corporations are not so restricted.

Caywood v. Supreme Lodge, etc., 171 Ind. 410.

The action was not commenced until thirty-three months after presentation of the claim. (R. 1, 6.) Petitioner contended both by demurrer to the complaint and by special answer that there could be no recovery because of failure to commence the suit within the time limited by the bond, asserting that the applicable portion of the above statute is in conflict with the 14th Amendment to the Constitution of the United States. The demurrer to the complaint was overruled, (R. 18, 19) and a demurrer to the answer was sustained. (R. 18-23.) Petitioner refused to plead further and judgment was entered in favor of respondent. (R. 23.)

On petitioner's appeal to the Circuit Court of Appeals for the Seventh Circuit, the judgment was affirmed on the sole ground that the statute in question was valid and rendered invalid the limitation in the bond. The court assigned as reasons that the statute antedated the ratification of the 14th Amendment to the Constitution of the United States, indicating that the Legislature had no intention to nullify that amendment; that the difference between a domestic insurance company and a foreign one is substantial; and that the discrimination was not arbitrary, but based on a

real and substantial difference having a reasonable relation to the subject of the particular legislation. The court did not attempt to point out what "the real and substantial difference" is. (R. 32-38.)

This petition seeks a review of the above-mentioned judgment of the Circuit Court of Appeals for the Seventh Circuit. The opinion is found in the record at pages 32 to 38. It has not yet been published.

II.

REASONS RELIED UPON FOR ALLOWANCE OF THE WRIT.

By said decision the Circuit Court of Appeals has sustained a statute of the State of Indiana arbitrarily discriminating against foreign insurance companies admitted to do business in Indiana, in that it prohibits such corporations from limiting by contract the time for commencement of actions on policies to a period of less than three years, while no similar limitation is imposed upon domestic insurance companies, there being no real and substantial differences pertinent to the subject in respect of which the classification is made, which decision is in conflict with Article 14 of the Articles in Amendment of the Constitution of the United States, as interpreted by this Court, and in conflict with the following applicable decisions of this Court:

Power Mfg. Co. v. Saunders, 274 U. S. 490, 493;

Quaker City Cab Co. v. Pennsylvania, 277 U. S. 398, 400, 401;

Hanover F. Ins. Co. v. Carr, 272 U. S. 494, 510;
Kentucky Finance Corporation v. Paramount Auto Exch. Corp., 262 U. S. 544,
Liggett Co. v. Baldridge, 278 U. S. 105, 111.

Wherefore, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Seventh Circuit, commanding that Court to certify to this Court for its review and determination, on a day certain to be herein named, all proceedings in the case numbered and entitled on its docket No. 4969, *The Metropolitan Casualty Insurance Company of New York, Appellant, v. Kenneth V. Brownell, as Receiver of The Peoples National Bank and Trust Company, Appellee*, and that the judgment of said Circuit Court of Appeals and of the District Court of the United States for the Southern District of Indiana be reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may be meet and just, and your petitioner will ever pray.

THE METROPOLITAN CASUALTY INSURANCE COMPANY OF NEW YORK,
By JAMES W. NOEL,
Attorney for Petitioner.

HUBERT HICKAM,
ALAN W. BOYD,
ROBERT D. ARMSTRONG,
Of Counsel.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

The opinion of the Circuit Court of Appeals for the Seventh Circuit is found in the Record at pages 32 to 38. It has not yet been published.

II.

JURISDICTION.

The date of the judgment of the Circuit Court of Appeals was January 12, 1934. (R. 39.) A petition for rehearing was seasonably filed on January 30, 1934 and denied on February 28, 1934. (R. 39, 42.) The decision affirms the judgment of the trial court.

III.

STATEMENT OF THE CASE.

Practically all essentials necessary to a consideration of this petition are set out in the petition under the "Summary Statement." (Petition, p. 2.)

IV.

ASSIGNMENTS OF ERROR.

The assignments of error are set forth in the petition under the heading of "Reasons Relied On For Allowance Of The Writ." (Petition, pp. 4, 5.)

V.

SUMMARY OF ARGUMENT.

By the decision in question, a statute of Indiana has been sustained that arbitrarily discriminates against foreign insurance corporations admitted to do business in Indiana, in violation of the Fourteenth Amendment as interpreted by this Court.

The right denied is one of substance and importance, and the discrimination is not theoretical only, but real.

The opinion of the Circuit Court of Appeals at least suggests the application of other principles in conflict with decisions of this court, such as:

1. That a statute violating the Fourteenth Amendment is any the less invalid because enacted before the ratification of that amendment;

2. That the intent or lack of intent upon the part of the State to violate the Fourteenth Amendment is material.

ARGUMENT.

By the decision a statute of Indiana has been sustained that arbitrarily discriminates against Foreign Insurance Corporations admitted to do business in Indiana, in violation of the Fourteenth Amendment as interpreted by this Court.

The sole question presented by the record in this cause is whether a State has the power to discriminate against foreign insurance corporations admitted to transact business therein by prohibiting them from inserting in policies of insurance a limitation of the time within which actions can be commenced on such policies to a period shorter than three years (or any other arbitrary period), no similar restriction being imposed upon domestic insurance companies engaged in precisely the same business. Petitioner contends that there is no difference between foreign and domestic insurance companies which would justify the discrimination and that under principles repeatedly announced by this court an *arbitrary* discrimination against foreign corporations of any character, which have been admitted to transact business in a state, violates the 14th Amendment to the Constitution of the United States by denying the equal protection of the laws.

The test laid down by this court to which the legislation must be subjected is that *classification must rest on real and substantial differences pertinent to the subject in respect of which the classification is made.* In *Power Mfg. Co. v. Saunders*, 274 U. S. 490, 493, there was involved a statute of the State of Arkansas providing that actions against foreign corporations

might be commenced in any county in the state, while actions against domestic corporations were required to be brought in counties where they had a place of business or in which their chief officer resided. A foreign corporation sued in a county where it had no place of business and no officer or agent contended that the court had no jurisdiction on account of the invalidity of the statute. This contention was denied by the Supreme Court of Arkansas, but was sustained by this court. The court said, p. 493:

> "We think it very plain that the statutes discriminate against foreign corporations and in favor of domestic corporations and individuals, and that the discrimination is not theoretical merely, but real and substantial.
>
> "The clause in the 14th Amendment forbidding a state to deny to any person within its jurisdiction the equal protection of the laws is a pledge of the protection of equal laws. (*Truax v. Corrigan*, 357 U. S. 312, 333, 66 L. ed. 254, 263, 27 A. L. R. 375, 42 Sup. Ct. Rep. 124; *Atchison, T. & S. F. R. Co. v. Vosberg*, 238 U. S. 56, 59, 59 L. ed. 1199, 1200; L. R. A. 1915E, 953, 35 Sup. Ct. Rep. 675); and extends as well to corporate as to natural persons (*Smyth v. Ames*, 169 U. S. 466, 522, 42 L. ed. 819, 840, 18 Sup. Ct. Rep. 418; *Gulf, C. & S. F. R. Co. v. Ellis*, 165 U. S. 150, 154, 41 L. ed. 666, 667, 17 Sup. Ct. Rep. 255; *Santa Clara County v. Southern P. R. Co.*, 118 U. S. 394, 30 L. ed. 118, 6 Sup. Ct. Rep. 1132). It does not prevent a state from adjusting its legislation to differences in situation or forbid classification in that connection; but it does require that the classification be not arbitrary, but based on a real and substantial difference having a reasonable relation to the subject of the particular

legislation. *Truax v. Corrigan, supra*, p. 337 (66 L. ed. 265, 27 A. L. R. 375, 42 Sup. Ct. Rep. 124); *Gulf, C. & S. F. R. Co. v. Ellis*, 165 U. S. 155, 41 L. ed. 668, 17 Sup. Ct. Rep. 255; *Lindsley v. Natural Carbonic Gas Co.*, 220 U. S. 61, 75, 78, 55 L. ed. 369, 377, 31 Sup. Ct. Rep. 337, Ann. Cas. 1912C, 160; *Ft. Smith Light & Traction Co. v. Board of Improvement.* (May 16, 1927, 274 U. S. 387, ante, 1112, 47 Sup. Ct. Rep. 595).

"No doubt there are subjects as to which corporations admissibly may be classified separately from individuals and accorded different treatment, and also subjects as to which foreign corporations may be classified separately from both individuals and domestic corporations and dealt with differently. But there are other subjects as to which such a course is not admissible, *the distinguishing principle being that classification must rest on differences pertinent to the subject in respect of which the classification is made.*

"Here the separate classification of foreign corporations is in respect of the venue or place of bringing transitory actions. The statutes mean foreign corporations doing business within the State *by her permission, and therefore having a fixed place of business therein and a resident agent on whom process may be served.* We speak only of them. So far as their situation has any pertinence to the venue of transitory actions *it is not distinguishable from that of* domestic corporations and individuals. Certainly there is no substantial difference. The opinion of the state court does not point to any relevant distinction, nor have counsel suggested any. Of course, the restricted venue as to domestic corporations and individuals is prompted by considerations of convenience and economy;

but these considerations have *equal* application to foreign corporations. *So far as the plaintiffs in such action are affected, it is apparent that there is no more reason for a state-wide venue when the action is against a foreign corporation than when it is against a domestic corporation or a natural person.* So we conclude that the special classification and discriminatory treatment of foreign corporations are without reasonable basis and essentially arbitrary.

* * *

"It of course rests with the state to prescribe the venue of actions brought in her courts. But the exercise of this power, *as of all others*, must be in keeping with the limitations which the Constitution of the United States places on state action. Procedural statutes are not excepted, but must fall like others when in conflict with those limitations. * * *"

"We accordingly reach the conclusion that the defendants' objection before stated to the validity of the venue provisions was well taken and should have been sustained under the equal protection clause of the 14th Amendment.

"Judgment reversed." (Our italics.)

This principle was affirmed by this court in *Quaker City Cab Co. v. Pennsylvania*, 277 U. S. 398, 400, where it is said:

"The equal protection clause extends to foreign corporations within the jurisdiction of the state, and safeguards to them protection of laws applied equally to all in the same situation. Plaintiff in error is entitled in Pennsylvania to the same protection of equal laws that natural persons within its jurisdiction have a right to

demand under like circumstances. *Kentucky Finance Corp. v. Paramount Auto Exch. Corp.*, 262 U. S. 544, 550, 67 L. ed. 1112, 1115, 43 Sup. Ct. Rep. 636. The equal protection clause does not detract from the right of the state justly to exert its taxing power or prevent it from adjusting its legislation to differences in situation or forbid classification in that connection, 'but it does require that the classification be not arbitrary but based on a real and substantial difference having a reasonable relation to the subject of the particular legislation.' *Power Mfg. Co. v. Saunders*, 274 U. S. 490, 493, 71 L. ed. 1165, 1167, 47 Sup. Ct. Rep. 678. It is established that a corporation, by seeking and obtaining permission to do business in a state does not thereby become bound to comply with or estopped from objecting to, the enforcement of its enactments that conflict with the Constitution of the United States. The right to withhold from a foreign corporation permission to do local business therein does not enable the state to require such a corporation to surrender the protection of the Federal Constitution. *Power Mfg. Co. v. Saunders, supra*, 497 (71 L. ed. 1169, 47 Sup. Ct. Rep. 678); *Hanover Fire Ins. Co. v. Harding* (*Hanover F. Ins. Co. v. Carr*), 272 U. S. 494, 507, 71 L. ed. 372, 379, 49 A. L. R. 713, 47 Sup. Ct. Rep. 179; *Frost & F. Trucking Co. v. Railroad Commission*, 271 U. S. 583, 593, *et seq.*, 70 L. ed. 1101, 1104, 47 A. L. R. 457, 46 Sup. Ct. Rep. 605; *Fidelity & D. Co. v.* Tafoya, 270 U. S. 426, 434, 70 L. ed. 664, 667, 46 Sup. Ct. Rep. 331; *Western U. Teleg. Co. v. Foster*, 247 U. S. 105, 114, 62 L. ed. 1006, 1016, 1 A. L. R. 1278, P. U. R. 1918D, 865, 38 Sup. Ct. Rep. 438; *Looney v. Crane Co.*, 245 U. S. 178, 188, 62 L. ed. 230, 235, 38 Sup. Ct. Rep. 85; *Sioux Remedy Co. v. Cope*, 235 U. S. 198, 203, 59 L. ed. 193, 197, 35 Sup. Ct. Rep. 57."

The principle stated by this court in *Hanover Fire Ins. Co. v. Carr,* 272 U. S. 494, 510, while in connection with the imposition of taxes, is also applicable. The court there recognized the distinction between inequalities which the foreign corporation must suffer for the privilege of being admitted to do business in the state, and those attempted to be imposed upon it after such admission, saying:

> "In subjecting a law of the state which imposes a charge upon foreign corporations to the test whether such a charge violates the equal protection clause of the 14th amendment, a line has to be drawn between the burden imposed by the state for the license or privilege to do business in the state and the tax burden which, having secured the right to do business, the foreign corporation must share with all the corporations and other taxpayers of the state. With respect to the admission fee, so to speak, which the foreign corporation must pay to become a *quasi* citizen of the state and entitled to equal privileges with citizens of the state, the measure of the burden is in the discretion of the state and any inequality as between the foreign corporation and the domestic corporation in that regard does not come within the inhibition of the 14th amendment; *but after its admission, the foreign corporation stands equal and is to be classified with domestic corporations of the same kind.*" (Our italics.)

In view of these recognized limitations upon the right of the states, petitioner asks: "*What* are the real and substantial differences pertinent to the subject in respect of which the classication is made in this case?" The subject of the particular legislation clearly is limiting the time within which actions must

be commenced upon policies of insurance. Pertinent differences must, therefore, necessarily be discovered affecting the commencement of such actions. The opinion of the Circuit Court of Appeals makes no attempt to answer this question. The court says that the difference between a foreign insurance corporation and a domestic one is certainly substantial, but surely if this is true, it is equally true of a foreign and domestic manufacturing company, or a foreign and domestic merchandising company. The fact that one is foreign and one is domestic alone cannot be sufficient under the decisions of this court to justify the classification. The Circuit Court of Appeals concludes its opinion as follows:

> "* * * We cannot say that when the legislation provided one set of regulations to control domestic insurance companies and another to control foreign insurance companies, the latter provisions applying uniformly to all corporations, within the class, was arbitrary; but, upon the contrary, it was based on a real and substantial difference, having a reasonable relation to the subject of the particular legislation. *Power Mfg. Co. v. Saunders*, 274 U. S. 490."

It is submitted that this statement has no factual foundation. There is nothing about the nature of a foreign corporation admitted to do business in a state that requires a different treatment from domestic corporations or individuals with reference to the right to limit by contract the time for commencement of actions. This court knows judicially the applicable characteristics of foreign corporations and the Indiana statutes with reference to the commencement of actions. There is but one Indiana statute providing

for the commencement of civil actions, Sect. 2-802 Burns' Indiana Stat. 1933 (Acts 1881, Special Session, Ch. 38, Sec. 55, p. 240), which is as follows:

> "2-802. (332). Filing complaint—Summons.—A civil action shall be commenced by filing in the office of the clerk a complaint, and causing a summons to issue thereon; and the action shall be deemed to be commenced from the time of issuing the summons; but as to those against whom publication is made, from the time of the first publication. The summons shall be issued by the clerk, under the seal of the court and directed to the sheriff, and shall notify the defendant of the action commenced, the parties thereto, and the court where pending."

Under this statute suit is deemed commenced when process is issued and delivered to the proper officer for service.

> *Marshall v. Matson*, 171 Ind. 238, 244;
> *Moore-Mansfield etc. Co. v. Indianapolis etc. R. Co.*, 179 Ind. 356, 361.

The actual service is not necessary to commencement. However, there is set out in the appendix hereto the various Indiana statutes relating to service of process upon foreign corporations demonstrating that such service has been adequately provided for. Under these statutes, it is no more difficult to commence an action against a foreign corporation than against a domestic corporation. Precisely the same method is followed in either case. Why, then, should a foreign corporation be denied the right to limit the time for commencing action to a period of fifteen

months when a competing Indiana corporation has the undoubted right to do so?

Caywood v. Supreme Lodge etc., 171 Ind. 410.

No facts of which the court does not have judicial knowledge could conceivably be material to a determination of the question. The case is one where no reasonable basis for the classification can be discovered.

Liggett Co. v. Lee, 288 U. S. 517, 533.

THE RIGHT DENIED IS ONE OF SUBSTANCE AND IMPORTANCE.

The right of insurance companies to impose reasonable contractual limitations is a substantial right, supported by a policy which this court has recognized as sound.

Riddlesbarger v. Hartford Ins. Co., 74 U. S. 386;
Hartford Accident & Indemnity Company, et al. v. Delta & Pine Land Co. (U. S. Sup. Ct. April 9, 1934).

It is just as important to foreign insurance corporations doing business in Indiana as to like Indiana corporations that the extent of losses sustained by them shall be speedily ascertained, and that in case of controversy upon a loss, resort shall be had by the assured to the proper tribunal while the transaction is recent and the proofs respecting it are accessible. The place of commencement of the action is merely procedural. The question of the right of contract involved here is substantive.

Moreover, competing foreign and domestic insurance companies are placed on a different basis with

reference to the length of time they must maintain reserves to cover possible losses. The discrimination is not merely theoretical, but real. Whether the petitioner has suffered in this particular case by the failure to comply with its contract is immaterial. The fact remains that it has the right to stand upon its contract in so far as the provisions thereof are not destroyed by valid state legislation. The principle involved is of widespread importance to insurance companies engaged in business throughout the United States.

Opinion of the Circuit Court of Appeals.

The Circuit Court of Appeals in this case has at least suggested the application of other principles which are contrary to decisions of this court. We refer especially to the following language:

> "The statute in question having been enacted before the 14th amendment, and having remained a part of the public policy of Indiana until now, it cannot even be suggested that the legislature had any design upon nullification of the 14th Amendment, but was attempting to establish a public policy for the State."

That state statutes, state public policy, and even state constitutions yield if in conflict with subsequently ratified amendments to the Constitution of the United States, is so fundamental that it is scarcely conceivable that the Circuit Court of Appeals intended to suggest the contrary. In both *Neal v. Delaware*, 103 U. S. 370, and *Ex parte Yarbrough*, 110 U. S. 651, the principle is stated with reference to the effect upon provisions of state constitutions. Also, the intention with which a legislature enacts a statute can play no

part in determining its validity. If within the power of the state, the motive cannot vitiate it, and, conversely, if the statute does in fact deny the equal protection of the laws, no legislative intent or lack of intent to violate the 14th Amendment can be material. In *Doyle v. Continental Insurance Company*, 94 U.S. 535, this court states that, "if the state has the power to do an act, its intention or the reason by which it is influenced in doing it cannot be inquired into." The converse necessarily is true.

The language quoted by the Circuit Court of Appeals from *Paul v. Virginia*, 75 U. S. 168, cannot apply to the question involved here. The petitioner is seeking to establish no peculiar privilege conferred on it by the laws of New York or any other state, but the privilege of contracting on the same terms as Indiana insurance companies, which it is denied by the statute in question.

Indiana Decisions Not in Point.

It is true, as stated by the Circuit Court of Appeals, that the validity of the statute has been sustained in one Indiana decision, (*Insurance Company of North America v. Brim* (1887), 111 Ind. 281, 287, 288), and assumed in later Indiana decisions. Aside from the fact that these cases are in no way controlling, they are not even persuasive because they involve no consideration of the question of discrimination. At the time the *Brim* case was decided, this court took a different view of the effect of the right to exclude foreign corporations, as including the right to admit them subject to discriminatory conditions. In *Terral v.*

Burke Construction Co., 257 U. S. 529, and subsequent decisions, the older views were overruled. While there are numerous decisions recognizing the power of the state to limit the contractual rights of insurance companies as to limitation periods, there are none except this cause involving the question of a restriction in this respect imposed upon foreign insurance companies alone.

It is submitted that this petition presents a subject matter which should be determined by a decision of this court.

Respectfully submitted,

JAMES W. NOEL,
Attorney for Petitioner.

HUBERT HICKAM,
ALAN W. BOYD,
ROBERT D. ARMSTRONG,
Of Counsel.

APPENDIX.

The following Indiana statutes pertain to service of process upon foreign insurance companies:

Par. (f) of Section 334, Burns' Indiana Annotated Statutes, 1929 Supp. (Acts 1929, page 806):

> "(f) Process upon a foreign corporation authorized to do business in this state may be served upon its agent in this state appointed to receive service.
>
> "Provided, however, That if the persons mentioned in subsections (a), (b), (c) and (f)* hereunder can not be found for service, process may be served upon the secretary of state of the State of Indiana, and such secretary of state shall mail such process to the post-office address of the corporation as shown on its last annual report to the secretary of state, and such service shall be sufficient to give the court of issue jurisdiction of the corporation party."
>
> * In general, these sub-sections cover presidents, presiding officers, chairman of the Board of Directors, secretary, treasurer or resident agent.

Section 9133, Burns' Ann. Stat. 1926 (Acts 1883, page 116):

> "9133. (4795) Service of Process.—1. It shall not be lawful for any insurance company chartered, organized, or incorporated in any other state or nation to do business in the State of Indiana until such company shall file with the auditor of state a certified copy of a vote or resolution of the board of directors of such company consenting that service of process in any suit against such company may be served upon

any authorized agent of such company in the State of Indiana, with like effect as if such company was chartered, organized or incorporated in the State of Indiana, and agreeing that any process served upon such agent shall be of the same legal force and validity as if served upon said company, and agreeing that such service may be so made, with such effect, while any liability remains outstanding against such company of this state, and agreeing further, that if at any time there shall be no authorized agent of such company in the county where any suit shall be brought, service may thereafter be made upon the auditor of state of the State of Indiana with such effect as if made upon an authorized agent of such company."

Section 9134, Burns' Ann. Stat. 1926 (Acts 1883, page 116):

"9134. (4796) Service by duplicate.—2. Service of process in any action against any insurance company not having an agent in that county where any suit shall be brought shall be made upon the auditor of state by duplicate copy, and such service shall be deemed in all respects the same as if such company was chartered, organized or incorporated in the State of Indiana: Provided, however, That a writ against the auditor of state, in such case, shall not be returnable until thirty days after service. It shall be the duty of the auditor of state, upon such service, to promptly send one copy of such summons by registered letter to the president of such company, at the home office of the company, or if such company shall be chartered, organized or incorporated in a foreign country and shall have a principal office in the United States, the auditor shall send such copy to such principal office in the United States. The audi-

tor shall file the other copy of summons in his office."

Section 9136, Burns' Ann. Stat. 1929 Supp. (Acts 1927, page 512):

> "9136. Subject to process in legal proceeding by citizen.—1. Every insurance company and corporation not incorporated by or organized under the laws of the State of Indiana, and now or hereafter doing business in the State, shall be subject to the process of the courts of this state, in any action, suit or other legal proceeding, relatiig to or founded upon any claim or demand of any character whatsoever, held or asserted against said company or corporation, by any citizen of the State of Indiana, and process against such company or corporation shall be served in the manner as now provided by existing laws: Provided, That this act shall not apply to nor affect any pending litigation."

Under Section 9162, Burns' Ann. Stat. 1926 (Acts 1919, page 109), all duties of the auditor of state with reference to insurance companies are transferred to the Insurance Commissioner.